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FILED

FEB 04 1998

**Commission on
Judicial Performance**

8 STATE OF CALIFORNIA

9 BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

11 INQUIRY CONCERNING JUDGE HOWARD R.
BROADMAN, NO. 145.

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VERIFIED ANSWER TO NOTICE OF
FORMAL PROCEEDINGS

14 This is Judge Howard R. Broadman's answer to the Notice of Formal Proceedings filed on
15 December 29, 1997.

16 1. Judge Broadman is a Judge of the Tulare County Superior Court, and has held that
17 position from April 7, 1986 until the present. Judge Broadman denies any willful misconduct in
18 office, conduct prejudicial to the administration of justice which may bring the judicial office into
19 disrepute, or improper action within the meaning of Article VI, section 18, of the California
20 Constitution.

21 2. At all times during his tenure in office, Judge Broadman has attempted to act in a
22 manner which is consistent with the proper and efficient administration of justice and in a manner
23 which is fair, non-prejudicial, and responsible to all litigants, to the people in Tulare County, and to
24 the people of the State of California.

25 COUNT ONE

26 3. Judge Broadman met with Judge Kenneth Conn and Judge Joseph Kalashian on or
27 about June 24, 1997. At that time, Judge Conn was the Presiding Judge of the Tulare County
28 Superior Court and Judge Kalashian was that Court's Assistant Presiding Judge.

4. Judge Conn initially had ordered Judge Broadman to appear before him the day before to discuss an incident involving jury coordinator Peggy McKinzie. Judge Broadman declined to appear at the ordered time because he was required to attend to judicial duties at that time. The subject of Judge Kalashian's attendance at this meeting had not been mentioned.

5. The next day, Judge Broadman appeared at the meeting attended by Judge Conn and Judge Kalashian. Judge Conn raised the possibility of reporting Judge Broadman to the Commission regarding the incident with Ms. McKinzie. Judge Broadman did **not** threaten to report Judge Conn to the Commission for any of his present or past actions. Any supposed “threat” of this nature was present only in Judge Conn’s own personal perception, and was not a meaning intended by Judge Broadman.

6. Judge Conn got angry during the meeting and left. While Judge Broadman did not give Judge Conn the assurance that the incident in question would not be repeated, Judge Broadman did later give that assurance to Judge Kalashian.

7. While Judge Broadman personally regrets the misunderstanding between him and Judge Conn, Judge Broadman denies that he made any threat to Judge Conn in violation of any canon of the Code of Judicial Ethics.

COUNT TWO

8. Judge Broadman presided over proceedings on November 21, 1996, in a quiet title action captioned, *King v. Wood*, Tulare Superior Court case number 96-173094. Judge Broadman does not understand what the Commission means by the term, “purported court trial,” and on that basis denies that description of the proceeding is accurate. Plaintiff Genice King appeared *in pro per*, and defendant Sandra Wood was represented by attorney James Johnson.

9. Judge Broadman does not recall that any of the proceedings in this case on November 21, 1996 were recorded. Judge Broadman does not agree with the characterization that “testimony” was taken which was not “subject to cross examination.” Judge Broadman disputes that the parties did not either expressly or impliedly consent to the manner in which the proceedings took place.

10. On December 3, 1996, judgment was entered against Ms. King and in favor of Ms. Wood, all based on documents submitted and arguments heard. The December 3, 1996 judgment

1 references the proceedings on November 21, 1996, and identifies that date as the time the “matter
2 came on regularly for trial.” Defendant’s counsel drafted and submitted the proposed judgment.
3 The court’s decision was based, not on the weighing of conflicting evidence, but rather on plaintiff’s
4 inability to produce **any** evidence on four enumerated critical issues. The judgment is akin to that
5 being based on non-suit or being of a summary nature.

6 11. Judge Broadman believes the judgment was appealable under the California Code of
7 Civil Procedure. On information and belief, Judge Broadman contends that plaintiff did not exercise
8 her option to appeal from the judgment.

9 12. At most, the Commission has alleged legal procedural error, the type which is within
10 the exclusive jurisdiction of California’s judicial system. Judge Broadman denies that anything
11 alleged in this count constitutes a violation of the Code of Judicial Ethics.

12 COUNT THREE

13 13. Judge Broadman admits that he presided over a civil contempt hearing on or about
14 August 28, 1996, in the case of *Smith v. Smith*, Tulare Superior Court case number 95-169027. He
15 concedes that this proceeding arose from a June 1996 order by which he gave custody of the Smiths’
16 children to Mr. Smith.

17 14. Judge Broadman admits that the 15-year-old daughter of Mrs. Smith was called as a
18 witness on behalf of Mrs. Smith. Mrs. Smith was the subject of the contempt proceeding -- **not** the
19 15-year-old witness.

20 15. The transcript segment referenced in the count is generally accurate. However, it is
21 incomplete and taken out of context of the rest of the proceeding. The Commission fails to even
22 identify the purpose of Judge Broadman’s inquiries of the witness. Judge Broadman disputes the
23 Commission’s characterization of the inquiries as a result of his having “interrupted” the witness.
24 That characterization is argumentative and untrue.

25 16. Judge Broadman denies that his treatment of this witness in the manner related
26 violated any canon of the Code of Judicial Ethics.

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1 COUNT FOUR

2 17. Judge Broadman admits that he found Mrs. Smith (re: Count Three) to be in contempt
3 of court, that she and her counsel (Edward Thomas) appealed the order, and that the Court of Appeal
4 annulled the findings of contempt based on procedural grounds only.

5 18. Judge Broadman is informed and believes that the next appearance of Mr. Thomas
6 before him was on or about March 28, 1997, in the matter of *Artis v. Artis*, Tulare Superior Court
7 case number 95-171218. Judge Broadman admits that Mr. Thomas represented the respondent in
8 that proceeding. Judge Broadman admits that he recused himself from the case. Judge Broadman
9 contends that his statement of recusal conformed with the requirements of California Rules of Court,
10 rule 226, as well as a local directive from his Presiding Judge. Judge Broadman's oral statement of
11 recusal, which was reduced to writing, is accurate as reported in the count.

12 19. Judge Broadman believes that the extent of his statement of recusal was either
13 required by court rules and local directive or was within acceptable parameters for discharging his
14 obligation to state the reasons for his disqualification. He strongly contends that the Commission,
15 with its non-lawyer, non-judge majority, has neither the jurisdiction nor the expertise to dictate to
16 any judge how to carry out the legal requirements of disqualification.

17 20. Judge Broadman denies that his actions in this case violated any canon of the Code of
18 Judicial Ethics.

19 FIRST AFFIRMATIVE DEFENSE

20 (Lack of Subject Matter Jurisdiction)

21 21. Judge Broadman asserts the Commission lacks subject matter jurisdiction to bring all
22 or some of the Counts or their sub-parts, as such concern matters of pure legal error or of purely
23 administrative matters exclusively reserved for the judicial branch of State government.

24 SECOND AFFIRMATIVE DEFENSE

25 (Failure to Allege Charges Involving Violations of Judicial Ethics)

26 22. Judge Broadman alleges that the charges brought against him, even if proven to be
27 factually correct, fail to allege violations of the Code of Judicial Ethics, California statutes, or
28 California constitutional provisions. As such, this inquiry constitutes an unlawful inquiry.

1 THIRD AFFIRMATIVE DEFENSE

2 (Vagueness of Charges)

3 23. Judge Broadman alleges that some or all of the charges or their sub-parts are vague to
4 the point of denying Judge Broadman the opportunity to adequately defend against the charges.
5 Moreover, no pleading vehicle exists whereby Judge Broadman may move for a more definite
6 statement. This violates Judge Broadman's due process rights.

7 FOURTH AFFIRMATIVE DEFENSE

8 (Conduct was Proper in the Judge's Representative Capacity)

9 24. Judge Broadman asserts that he is a representative of the people who elected him to
10 judicial office. He asserts that no canon of judicial conduct may interfere with his duties as a
11 representative to his constituents.

12 FIFTH AFFIRMATIVE DEFENSE

13 (Violation of Due Process)

14 25. Judge Broadman alleges that the Commission's procedure whereby it investigates the
15 charges on its own motion, drafts the charges against the judge, determines if evidence supports the
16 charge, prosecutes the charge, and imposes discipline on the judge with the judge being given no
17 right of mandatory appellate review, violates federal and State due process guarantees. Judge
18 Broadman further asserts that ex parte communications between the Examiners and the
19 Commission and/or its staff violate the investigated judge's due process rights. Judge Broadman
20 further asserts that the Commission's act of withholding any portion of its file on the investigated
21 judge denies the judge with an opportunity to fully defend against the charges and, accordingly,
22 violates that judge's due process rights. Judge Broadman asserts that such denial of his
23 constitutional due process rights is being knowingly and willfully undertaken by the Commission,
24 and not committed on the basis of mere negligence.

25 SIXTH AFFIRMATIVE DEFENSE

26 (Improper Denial of Discovery Rights)

27 26. Judge Broadman alleges that the Rules of Court governing discovery in a judicial
28 misconduct case are legally insufficient and discriminatory. He alleges the discovery procedures

1 which are allowed are insufficient to permit an adequate opportunity to defend against the charges.
2 He further alleges that such rules which give the Commission a "work product" privilege not
3 available to the judge violate the equal protection clause of federal and State constitutions.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 **(Violation of Separation of Powers Doctrine and "The Principle of Check")**

6 27. Judge Broadman alleges that rules giving the Commission (with its non-judge, non-
7 lawyer majority) the power to discipline a judge, with the judge having no right of mandatory
8 appellate review, violate the State separation of powers doctrine and the "principle of check."

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **(Mitigation)**

11 28. Judge Broadman alleges that other matters not pled as facts in the Notice of Formal
12 Proceedings render the charges invalid and/or serve to mitigate against any act which could
13 otherwise be characterized as judicial misconduct.

14 **NINTH AFFIRMATIVE DEFENSE**

15 **(Defense of Harassment)**

16 29. Judge Broadman alleges that some or all of the Commission's counts or sub-counts
17 against him are motivated by improper factors including personal pique or the desire to harass.
18 Judge Broadman asserts that some or all of the counts or sub-counts against him concern matters
19 which, if alleged against another judge, would not have resulted in inclusion in a Notice of Formal
20 Proceedings and/or would not rise to the level of discipline which the Commission seeks to apply.

21 Dated: January 29, 1998

LEWIS, D'AMATO, BRISBOIS & BISGAARD LLP
JAMES E. FRIEDHOFER
DOUGLAS R. REYNOLDS
LISA K. ROBERTS


24 By: _____



JAMES E. FRIEDHOFER
Attorneys for Respondent,
THE HONORABLE HOWARD R. BROADMAN

VERIFICATION

I, Howard R. Broadman, have read the foregoing Answer to Notice of Formal Proceedings in Inquiry No. 145 and know its content. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Visalia, California on January 28, 1998.

A handwritten signature in dark ink, appearing to read 'H. Broadman', is written over a horizontal line.

Howard R. Broadman
Judge of the Superior Court

PROOF OF SERVICE


CASE NAME: INQUIRY CONCERNING A JUDGE, NO. 145 (Broadman)
CASE NUMBER: N/A
COURT: BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE


I, Lesli D. Miller, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. I am an employee of the Law Offices of Lewis, D'Amato, Brisbois & Bisgaard LLP and my business address is 550 West "C" Street, Suite 800, San Diego, California 92101.

On February 2, 1998, I served the following document(s):

VERIFIED ANSWER TO NOTICE OF FORMAL PROCEEDINGS

addressed to:

Roland W. Selman, Esq. 
Commission Counsel
COMMISSION ON JUDICIAL PERFORMANCE
101 Howard Street, Suite 300
San Francisco, CA 94105

Jack Coyle, Esq. 
Commission Trial Counsel
COMMISSION ON JUDICIAL PERFORMANCE
101 Howard Street, Suite 320
San Francisco, CA 94105

☒ **(BY MAIL)** I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I deposited said envelope in the United States Mail in the City and County of San Diego, California. I am readily familiar with our law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, that this mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.

☐ **(BY FEDERAL EXPRESS)** I sent the original or a true copy thereof enclosed in a sealed envelope to be delivered to Federal Express for overnight service to the office(s) of the addressee(s).

☒ **(BY TELECOPIER)** In addition to service by mail as set forth above, the counsel by whose name an asterisk is affixed on the attached service list were also forwarded a copy of said document(s) by telecopier.

Executed on February 2, 1998, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


LES LI D. MILLER